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An Operational Commander's Guide to
Contractors on the Battlefield

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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10 MAY 2007

Abstract

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As active duty troop strength has decreased over the past decade, reliance on contractor support has grown significantly. Contractor support currently spans from the United States to Forward Operating Bases in contingency operation areas. This paper provides key arguments to the operational commander for promoting effective use of contractors in a non-permissive environment. It groups contractors by how they operate in the non-permissive environment, breaks down operational commander force protection requirements into individual and group categories, creates indicators for identifying the need to utilize contractors, and identifies a basic rule structure that protects the commander, populace, and contractors. Finally, the paper provides planning and execution recommendations for maximizing force capabilities when using contractors.

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Introduction

Contractors are an essential force component of the modern United States military. To ensure mission success in a non-permissive environment¹, operational commanders must ensure proper use, oversight and safety of civilians accompanying the force (CAF) contractors. As active duty troop strength has decreased over the past decade, reliance on contractor support has grown significantly. Contractor support currently spans from the United States to Forward Operating Bases in contingency operation areas. Proper planning, including contractors' legal considerations and well-constructed operational tenants, promotes effective use of contractors in a non-permissive environment. It also reduces risk to both the military and the contractor.

Increased Presence of contractors

Contractors in United States military operations are pushing further into activities traditionally fulfilled by active and reserve military personnel. This is due, in large part, to the significant reduction of authorized active duty end strength approved by Congress. Fiscal Year 1987's authorized end strength was 2.2 million active duty personnel (Army, Navy, Marine Corps, Air Force)². Over the past 20 years these numbers have been incrementally reduced; the National Defense Authorization Act for fiscal year 2007 reduced this number to

¹ Joint Publication 1-02 defines permissive environment as: "Operational environment in which host country military and law enforcement agencies have control as well as the intent and capability to assist operations that a unit intends to conduct." This paper uses this definition to explain a non-permissive environment as one in which some level of lawlessness or heightened risk is assumed due to a breakdown in host country military and law enforcement capability, Joint Chiefs of Staff, Department of Defense Dictionary of Military and Associated Terms, Joint Pub 1-02 (Washington, DC: 22 March 2007), 408.

² General Accounting Office, Analysis of Operation and Maintenance Accounts for 1985-2001, (Washington, DC: February 97), 4.

fewer than 1.4 million personnel³. The 36 percent reduction in end strength in the past two decades has not paralleled a commensurate reduction in tasking⁴. Outsourcing of these support functions to contractors is part of outsourcing initiatives started during the Clinton administration and accelerated as part of Secretary Rumsfeld's transformation plan⁵. The result is that functions recently performed by uniformed military, such as security and messing, have become contracted services. These contractors operate at permanent CONUS and OCONUS bases. Such services are also provided by contractors in less secure environments such as Camp Doha, a major forward base in Kuwait⁶. As outsourcing continues to gain momentum, contractors are increasingly operating in non-permissive environments, including active battlespaces, where risk can be significantly higher than normal environments. Traditional methods of accountability of contract personnel are proving inadequate⁷. While positive control of the total operating force is critical to an operational commander, methods employed for maintaining control of military personnel do not translate perfectly to maintaining control of civilian contractors.

Like military personnel, contractors working in non-permissive environments require measured levels of protection. From personal protective gear and weapons, to sub-unit, unit and group levels of protection, the military is well geared and trained to operate in such an

³ General Military Law, U.S. Code, Title 10, sec. 401 (2006).

⁴ James E. Manker Jr. and Kent D. Williams, "Contractors in Contingency Operations: Panacea or Pain?" Air Force Journal of Logistics, Vol XXVIII, No. 3, (Fall 2004): 16-17.

⁵ Paul C. Light, "Rumsfeld's Revolution at Defense," The Brookings Institution Policy Brief, 142 (July 2005): 7.

⁶ "Camp Doha," Camp Doha, 9 May 2007, <<http://www.globalsecurity.org/military/facility/camp-doha.htm>> [02 May 2007]

⁷ Department of Defense, Continuation of Essential DoD Contractor Services During Crises, DODINST 3020.41, Washington, DC: 2005, 3.

environment. Contractors often lack the equipment. More frequently they lack training to maintain even personal levels of protection, much less maintaining proficiency of organized protective measures for a group.

An operational commander's responsibility to provide protection for people under his jurisdiction varies and becomes greater as the threat situation increases. Joint Publication 4-0 identifies contractor force protection as the responsibility of the contractor, unless otherwise identified in the government contract⁸. Contracts that clearly spell out the security responsibilities of both the contractor and the government offer few complications. Where contractual provisions are not as clear the legal responsibility for security of contractors may fall onto the government, and therefore the operational commander. A basic understanding of contracts is necessary for all operational commanders.

The contracting officer's warrant allows contract officers to commit the United States government to legally binding documents. On entering into a contract for the provision of services to the government, both parties are expected to accurately portray the situation to each other, in "Good Faith." If the contractor provides services in a non-permissive environment without adequate provisions in the contract for definition of security requirements, that responsibility falls to the government. This responsibility may be covered by financial compensation or through providing government furnished security, but must be available. The contracting officer, through a warrant, has the ability to bind an operational commander to provide security for contractors. While the contracting officer may not have the commander's authority, such actions are legally binding.

⁸ Joint Chiefs of Staff, Doctrine for Logistic Support of Joint Operations, Joint Pub 4-0, (Washington, DC 6 April 2000), V-1 to V-3.

Operational commander responsibility for civilian contractors also falls under the auspices of Information Operations and Public Affairs. Harm done to contractors in an operational commander's battlespace has significant ramifications, especially during Phase III and IV operations, when both the perception and the quality of civil law enforcement is critical to ensuring continued progress in stabilization of the operating environment. This point was sadly brought to light when four Blackwater USA contractors were ambushed, brutalized, and hung on a bridge⁹. Contractor security is vital to the execution of such operations and therefore becomes the responsibility of the commander executing such a mission. The operational commander supported by contractors must provide security for those contractors in the battlespace, demand and/or provide training that gives the contractor adequate capability to provide self-security, or prevent contractors from entering an environment that is beyond their personal security capability. The type of contract employed will help to define the role and responsibility of the operational commander.

Contract types

JP 4-0 defines three types of contract: Systems Support, External Theater Support and Theater Support¹⁰. Security requirements vary by the type and duties of the contractor. Systems Support contracts are generally tied to maintenance or operation of military systems, ranging from vehicle maintenance of the Marine Corps' new Medium Tactical Vehicle Replacement (MTVR) built by Oshkosh Truck Corporation, to computer systems support for

⁹ Blackwater USA contractors provide security and are not the type of contractors addressed by this paper, however, this high profile case does illustrate this specific argument regardless of this differentiation.

¹⁰ JP 4-0, V-1, V-2.

Common Operating Picture programs and hardware such as Command and Control Personal Computer (C2PC) and Global Command and Control System (GCCS).

External Theater Support contracts are generally large contracts developed to be flexible and cover a wide variety of service support functions. The Air Force, Army and Navy all maintain these contracts in the form of Air Force Capabilities (AFCAP), Logistics Capabilities (LOGCAP) and Construction Capabilities (CONCAP) contracts respectively. All three contracts follow Federal Acquisition Regulations and Defense Federal Acquisition Regulations, but each contract has different service rules and different organizations that award and administer them. These contracts can often be found in the same theater of operations providing support through different contracting offices, where the contracting officer might not even be located in theater. This creates complications for and adds complexity to the operational commander's need to identify and implement procedures for the use, oversight, and protection of contractors.

Theater Support contracts are awarded and administered by contracting officers located within or near the operational commander's battlespace. Each service has contracting officers, both military and civilian, that can deploy into non-permissive environments and order goods and services as required by operational units. How these contracting officers are provided and managed depends on the branch and in some cases the goods/services required. Air Force, Army and Marine Corps contracting officers can provide a full range of services. The Navy's contracting capabilities are split through the five Systems Commands. A contracting officer that can order goods and supplies might not be able to contract for civil construction as the former capabilities are provided by the Naval Supply Systems Command and the latter by the Naval Facilities Engineering Command

contracting officers. Assumptions about the contractor's responsibility for force protection and the chain of responsibility from the contractor to the operational commander are potentially paralyzing.

Distribution of Contractors

Personnel distribution adds another layer of complexity in the management of contractors. As in the example of command and control systems management, many nodes of one or two contractors can be distributed out to numerous individual tactical commands. They effectively become members of those commands, although there is no formal chain of command developed for clear responsibility. In other cases, large numbers of contractors provide services to a base or to whole operational areas. In Iraq, 1st Corps Support Command (COSCOM) and the contractors operating under its guidance provide services for United States forces throughout the area. Contractors providing support to individual units or a base enjoy the protection provided by the unit they are supporting or by base force protection measures. Excepting initial contractor deployment or subsequent transfer or redeployment to another base or unit, security, above individual force protection, is provided. On the other hand, contractors who are exposed directly to the non-permissive environment, such as logistical transportation contractors, may have a much less established support system for force protection above the individual level. Clarity of accountability is absolutely necessary to maintain protection.

Force Protection

Contractors often lack the training and equipment that protects soldiers in non-permissive environments; they also lack many of the legal protections. The Department of

Defense classifies the majority of its contractors as civilians accompanying the force (CAF). These are contractors that are employed in Combat Support and Combat Service Support Function and do not engage in combat. They have protection and should be treated as Enemy Prisoners of War if captured. This protection is derived from the Geneva Convention Relative to the Treatment of Prisoners of Wars, the Hague Convention No. IV Respecting the Laws and Customs of War on Land, and the Annex Thereto Embodying Regulations Respecting the Laws and Customs of War on Land. All of the above require the enemy to be signatories to or recognize these conventions in order to be binding¹¹. Should these contractors engage directly in the hostilities, they can be classified as enemy combatants and/or unprivileged belligerents, thereby losing protection and potentially facing trial or treatment as war criminals¹².

Criminal Jurisdiction

Legal status, with regards to criminal jurisdiction, can be hard to pin down. Individual contractors represent various countries besides that of the United States, the host nation, or the occupied nation. It is often not clear which laws and legal systems apply when a contractor has potentially broken the law. Clarification can sometimes be found in the contract or in an existing Status of Forces Agreement (SOFA)¹³. In Iraq, the Coalition Provisional Authority (CPA) has further defined a contractor's legal status. The CPA determined that the legal jurisdiction for contractors is their parent state, and contractors

¹¹ International and Operational Law Department, The Judge Advocate General's Legal Center and School, U.S. Army, *Operational Law Handbook*, Charlottesville, VA: 2005, 145.

¹² R. R. Vernon, "Battlefield Contractors: Facing Tough Issues," Public Contract Law Journal, 33 (Winter 2004), 369.

¹³ Operational Law, 145.

cannot be tried under Iraqi law¹⁴. Without the ability to directly prosecute contractors acting inappropriately, the operational commander has limited responses and often resorts to removing the contractor from the AOR. Any disruption of normal operating procedure takes attention away from mission success.

Discussion

Mission success is the overlying concern for operational commanders. While contractors are critical to such success, they add a layer of complexity to organizing and executing a solid plan. The next section will reduce the various components of contractor support and operational commander responsibilities regarding them, thus identifying and recommending practices for managing contractors in non-permissive environments. Incremental steps will group contractors by how they operate in the non-permissive environment, break down operational commander force protection requirements into individual and group categories, create indicators for identifying the need for contractors, and identify a basic rule structure that protects the commander, populace, and contractors. The resulting rubric will enable more effective contractor utilization by the operational commander.

Based on their utilization, contractors fall into three categories: Individuals that support operational units; Organizations that support bases; and Theater contractors.

¹⁴ Office of the Administrator of the Coalition Provisional Authority Baghdad, Iraq, Public Notice: Regarding the Status of Coalition, Foreign Liaison and Contractor Personnel, (Baghdad: 2003), 1.
<http://www.cpa-iraq.org/regulations/20030626_20030626_CPANOTICE_Foreign_Mission_Cir.html.pdf>

Depending on their utilization category, contractors can then be assigned the correct military organizations to provide tracking and security requirements.

Individuals supporting operational units can be integrated into units with little effort. These individuals provide their support within the structure of a functioning military unit, much like chaplains. If properly equipped and trained for self-preservation (see below), these individuals should perform the way military personnel would if their weapons were taken away. After certifying the contractor's training in self-preservation, the gaining military unit's primary concern will be access to the proper contracting office to resolve issues of non-performance or other individual problems. Accountability can be effectively rolled into the military unit's existing reporting procedures. Loss of contractor support requires contingency plans, including training military members to take over contractor's jobs and redundancy in staffing of contractors in order to account for the loss of individuals. Because the individual contractor acts essentially as a member of the unit, messing and berthing do not need to be addressed.

While most units can absorb a few individuals, organizations that support bases, such as the Turkish laundry contractor that supported the Marines located in Fallujah during Operation Iraqi Freedom in 2003, can have a larger impact on operational planning. On the individual level, equipping and training should be no different than that of other contracts. Any additional support that each contract requires to accomplish its mission must be identified and provided for in a timely manner.

Some issues arise that affect both the military and additional contractors. For example, a larger number of contractors might lead to a larger base footprint, requiring additional force protection assets. If the number of contractors, having no combat capability,

is a significant portion of the base population, then the standard levy of personnel from the base (tenants) to provide protection may be strained and must be addressed. Reporting of personnel and identification of non-performance becomes the responsibility of the base commander. Services of this type support multiple tenants on the base, and the base commander maintains responsibility for force protection. Therefore, contractor accountability at the base commander level is in line with other base functions. Depending on the size of the base, a contract-tracking cell may need to be established and staffed to effectively negotiate contractor support. Organizations that support multiple bases, such as External Theater Support contracts like LOGCAP, offer minimal complications, as they are coordinated by the base as a single entity.

As the number of individuals per contract increases, and the required mobility of those contractors' increases, so does the need for more detailed contract tracking. Theater contractors are focused on providing inter-base support. These contractors operate in a manner operationally different from those described above. The increase in numbers of CAF contractors requires more planning and dedicated execution of force protection. Theater contractors should be linked to a service support unit that is tasked with providing support to tactical units. For example, 1st COSCOM was tasked with such a mission during OIF 04-06. Specifically, 1st COSCOM was tasked to provide logistics to the Multinational Corps-Iraq. Roughly 9,000 civilian contractors supplemented COSCOM's 18,500 soldiers¹⁵. The nearly 1:2 ratio of soldiers to contractors illustrates the critical nature of providing appropriate security forces. Two Brigade Combat Teams were required to support the base security and

¹⁵ Yves J. Fontaine and Donald K. Wols, "Sustaining the Momentum: The 1st Corps Support Command in Iraq," Army Logistician, (March/April 2006): 3.

escort-and-security support of COSCOM¹⁶. LOGCAP provided most of the contractor support.

While the level of support required to base and escort such a large contractor force is great, some aspects of theater contractor support is less complicated than the other categories of contractor support. COSCOM directly partnered with the Army Material Command to administer LOGCAP. This provided well-established control over contract administration. COSCOM was able to surge capability by using other LOGCAP contractors in theater when its mission surged¹⁷. Contractor capability in such an organization is clearly a primary effort and should be overseen accordingly. If properly organized, theater contractors and contract management teams can provide direct support to Organizations that support bases by providing additional contractors, or a core of contract expertise in managing oversight problems.

Understanding the difference in contract categories, in addition to understanding the needs of all units in the battlespace, creates greater opportunities for success for operational commanders. Effective force protection relies on the proper training of contractors as well as established rules, in order to have more consistent use of contractors throughout the theater. JP 4-0 is effective at determining the type of contract or where the contract was awarded. However, the system by which JP 4-0 categorizes does not translate into how an operational commander maintains control. Splitting contractors into Individuals, Organizations, and Theater allows the operational commander to categorize various contractors by the type of support and the appropriate level of organizational oversight they will require.

¹⁶ Fontaine, 4.

¹⁷ Ibid., 4.

Establishing the contractor's role in force protection is critical to the safety of both the contractor and military personnel. Clearly the threat to contractors is significant; at least 398 individual contractors, of which approximately 158 were American, have been killed since OIF commenced¹⁸. The Geographic Combatant Commander (GCC) has the explicit responsibility for establishing contractor training and equipment requirements¹⁹. The Secretaries of the Military Departments and the Directors of Defense Agencies have the responsibility to ensure contractors meet the GCC's stated requirements. Once in the theater, any untrained, poorly equipped contractors become the responsibility of the operational commander. Therefore, measures should be taken by the operational commander to ensure that these requirements have been met prior to the contractor entering the non-permissive environment.

Establishment of force protection roles starts with identifying individual protection, beginning with passive gear, such as clothing, body armor, and helmets. While contractor personnel need to be distinguishable from military members²⁰, gear that matches that of soldiers accomplishing equivalent missions is the best option, as it reduces the requirement for any special training, servicing or replacement of gear once the contractor is in the theater. The need to replace gear is a given due to the environment; additional stock of suitable gear can be provided by the government to the contractor, at cost or as part of the contract. Without appropriate gear, contractors can be excluded from the operating area. In addition, a

¹⁸ "Iraq Coalition Casualties: Contractor Deaths – A Partial List," Iraq Coalition Casualties, 9 May 2007, <<http://icasualties.org/oif/Civ.aspx>> [03 May 2007].

¹⁹ DODI 3020.41, 5.

²⁰ *Ibid.*, 14.

ready supply of personal equipment influences the standardization of gear, making its acquisition and replacement more timely.

After individual protection has been established, group protection roles must be enacted. Like military personnel, contractors should be trained in order to orient them with restricted areas. At the minimum, group protection includes training in proper base security procedures. It extends to off-base security and convoy procedures. Contractors need to be trained in maintaining oversight of foreign, host, and third country national contractors. Training in identification of specific threats, such as improvised explosive devices and suspicious activities, ensures that contractors act as part of an operating base or unit's protective force. As contractors may have access to high value targets that military personnel might not, such as generators and fuel farms, this training is critical. Contractors are most exposed to non-permissive environments during convoys. Training in convoy procedures must be thorough, especially for contractors whose primary mission is transportation. Where possible, training with military escort forces should be required in order to ensure coordination of effort. Dedicated military escorts are preferable to ad-hoc security as the added complexity of escorting civilians stresses convoy emergency procedures. Contractors whose primary responsibilities lie in base or unit support should avoid unnecessary convoys due to the increased danger to both the contractor and security personnel.

Contractors operating under the title of "civilians accompanying the force," are not authorized to use individual firearms, except in specific circumstances²¹. By engaging the enemy with such a weapon, they risk muddying their legal status if captured, while providing

²¹ DODI 3020.41, 14

a more acceptable target for the enemy. There is the chance that contractors in possession of their own firearms will feel overly confident and operate outside the force protection provided by the military. More importantly, the operational commander's ability to enforce the Rules of Engagement and punish improper use of force, is hampered by the lack of military legal jurisdiction over the contractor's acts²². In light of the above, exceptions to restricting the use of individual weapons should be thoroughly considered before being approved. Consideration of contractors for combat capability serves as an indicator to the commander that the appropriate force mixture is off-balance.

Conclusion

Operational commanders have a complex task in matching troop to task. As the "troop" is replaced with a civilian contractor, the commander must have the tools to identify which troops should be replaced. Throughout planning and mission execution, the commander must always consider required and available forces. In order to maximize effectiveness, a few questions should be asked. Is there a military force cap? If the mission is more complex than can be completed within the force cap, then contractors provide an expanded capability within the restrictions. What tasks are inherently military? Identification of inherently military tasks helps identify missions that might be effectively replaced with contractor support. Are there shortfalls in availability of units that can be replaced with contractor support? Does the duration or type of task lend itself better to execution by contractors? Can contractors accomplish missions that are currently executed by military personnel, thereby reducing military force requirements? What is the effect of

²² DODI 3020.41, 7

going from external theater support contracts to theater support contracts? Such a shift, while reducing costs, might increase the level of government administration and flexibility to shift contractors between bases. Are the savings in personnel from contracting a function sufficient to compensate for any added security burden? Maybe military personnel should accomplish the task. Continuing cost-to-benefit analysis of these and other considerations will enable the operational commander to focus military capability on essential military functions. By converting those tasks that provide the highest savings in personnel costs to CAF contractors, the operational commander can utilize the best force composition, with the smallest overall footprint.

Recommendations

In order to effectively use CAF Contractors, operational commanders must have an understanding of their capabilities and limitations. Adoption or modified implementation of the following recommendations will allow the operational commander to establish effective control over their CAF personnel, thus forwarding mission success in the AOR:

- Categorize contractors by the way they integrate with military forces. This paper suggests the three broad categories of: Individuals that support operational units; Organizations that support bases; and Theater contractors. Differing situations might suggest other solutions, but categorization should be based on utilization not contract type.
- Establish and enforce general training and equipment requirements for CAF forces based on their categories. Don't expect Service Commanders to provide CAF forces with the training required by the GCC. Ensure that training is accomplished prior to allowing CAF

contractors into the non-permissive battlespace. Be prepared to provide training and equipment. Integrate convoy training for CAF contractors and military security forces.

- Create a mutually supporting administrative structure to provide the appropriate level of contractor tracking at all categorization levels. Theater should support base and base should support individual units with contractor administration.

- Ensure that all plans, especially, force protection and combat service support plans account for CAF requirements. CAF contractors may be severely limited in capability or become highly vulnerable if force protection is inadequate.

- Understand what laws CAF contractors are subject to and identify whether the commander has authority to enforce them. Find any existing agreements or laws, such as SOFAs, that may exist relevant to the operating area and understand key contract stipulations.

- Develop an understanding of CAF capabilities and restriction in order to properly plan force strengths. Be prepared to adjust forces to cover CAF contractors. Utilize contractors to accomplish tasks despite force caps.

Incorporation of these recommendations into planning and execution of operational missions will greatly increase the ability of the operational commander to face the complexities of the modern battlefield.

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